

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PETER GONZALEZ,

Plaintiff,

v.

J. GARIBAY, M.A. SMELOSKY, N.  
GRANNIS,

Defendants.

CASE NO. 09-CV-1080 W (WVG)

**ORDER:**

**(1) ADOPTING REPORT AND  
RECOMMENDATION  
(DOC. NO. 16.)**

**(2) GRANTING-IN-PART and  
DENYING-IN-PART  
DEFENDANTS' MOTION TO  
DISMISS (DOC. NO. 14.)**

On May 15, 2009, Plaintiff Peter Gonzalez ("Plaintiff"), a state prisoner proceeding pro se, initiated this action under 42 U.S.C. § 1983. (Doc. No. 1.) Defendants have moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 14.) Plaintiff did not file an opposition to Defendants' motion.

On May 4, 2010, Magistrate Judge William V. Gallo issued a Report and Recommendation ("Report"), recommending that the Court grant-in-part and deny-in-part Defendants' motion. The Report also ordered that any objections were to be filed by June 1, 2010, and any reply filed by June 14, 2010. (Doc. No. 16 at 16..) To date, no objection has been filed, nor has there been a request for additional time in which to file an objection.

A district court's duties concerning a magistrate judge's report and recommendation and a respondent's objections thereto are set forth in Rule 72(b) of the Federal Rules of

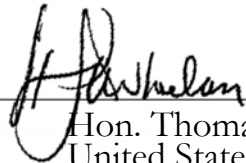
Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are filed, the district court is not required to review the magistrate judge's report and recommendation. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003)(holding that 28 U.S.C. 636(b)(1)(c) "makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise")(emphasis in original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219, 1226 (D. Arizona 2003) (concluding that where no objections were filed, the District Court had no obligation to review the magistrate judge's Report). This rule of law is well established within the Ninth Circuit and this district. See Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005)("Of course, de novo review of a R & R is *only* required when an objection is made to the R & R.")(emphasis added)(citing Reyna-Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopted Report without review because neither party filed objections to the Report despite the opportunity to do so, "accordingly, the Court will adopt the Report and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

The Court, therefore, accepts Magistrate Judge Gallo's recommendation, and **ADOPTS** the Report in its entirety. (Doc. No. 16.) For the reasons stated in the Report, which is incorporated herein by reference, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** Defendants' motion to dismiss. (Doc. No. 14.)

Should Plaintiff choose to file a First Amended Complaint, he must do so **on or before August 6, 2010**. Plaintiff should only amend the causes of action that were dismissed "without prejudice." (See Doc. No. 16 at 16.)

**IT IS SO ORDERED.**

DATED: July 2, 2010

  
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Hon. Thomas J. Whelan  
United States District Judge